



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/796,214 | 03/10/2004 | Toshihisa Nakano | 2004-0385A | 2392 |
| 52349 7590 03/20/2009 WENDEROTH, LIND & PONACK L.L.P. 1030 15th Street, N.W. Suite 400 East Washington, DC 20005-1503 | | | | |
| EXAMINER | | | | |
| SCHMIDT, KARI L | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 2439 | | | | |
| MAIL DATE | | DELIVERY MODE | | |
| 03/20/2009 | | PAPER | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

| | |
|--------------------------------------|--------------------------------------|
| Application No. 10/796,214 | Applicant(s) NAKANO ET AL. |
| Examiner KARI L. SCHMIDT | Art Unit 2439 |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 March 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 43-58.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Kambiz Zand/
Supervisory Patent Examiner, Art Unit 2434

Continuation of 11, does NOT place the application in condition for allowance because: The applicant argues the 35 U.S.C. 112, first paragraph rejection by stating the Applicant's Specification discloses "an existence confirmation unit operable to confirm whether or not the piece of the media key data exists on the recording medium." The examiner disagrees. The examiner has noted within the final action that the Examiner stated "existence confirmation unit" confirms a status (exists or does not exist) of the media key (e.g. media key data) on a medium. The examiner still feels that the "existence confirmation unit" is not taught to perform the applicant's claim. More specifically whether or not the "piece" of the media key exists on the recording medium. Further the examiner notes that the "existence confirmation unit" is noted to be a "comparing unit." The examiner suggests to the applicant to use the language found in the specification more specifically "a comparing unit operable to confirm whether or not the media key data exists on the recording medium." Therefore as currently claimed the examiner notes the applicant specification fails to disclose "an existence confirmation unit operable to confirm whether or not the piece of the media key data exists on the recording medium." Therefore the 35 U.S.C. 112, first paragraph rejection of the "existence confirmation unit" is maintained.

The applicant argues the 35 U.S.C. 112, second paragraph rejection. The examiner will maintain the rejection with respect to the term "existence confirmation unit" is still a relative term that is unknown to one of ordinary skill in the art is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention and will interpret it to mean a "unit" that has the ability to judge if a particular identification information is stored on a recorded medium.

The applicant argues the 35 U.S.C. 103 rejection with respect to Ansell in view of Moribe (and Lotspiech) failing to disclose "an existence confirmation unit that confirms whether or not a piece of the Media key data exists on a recording medium and a writing unit that, when the existence confirmation unit confirms that the media key data does not exist on the recording medium writes the encrypted content, the encrypted content key, and the piece of media key data stored in the storage unit into the rewritable area of the recording medium. The examiner disagrees. The examiner notes the combination of Ansell in view of Moribe does indeed disclose the claimed invention. The examiner notes Ansell discloses a writing unit operable to record the encrypted content, the encrypted content key, and the piece of media key data stored in the storage unit into the rewritable area of the recording medium (see at least, col. 5, lines 46-col. 6, lines 65). The examiner has sought to combine Moribe to disclose "an existence confirmation unit" that confirm whether data exists on a medium and whether a writing unit can write on the medium (see at least, col. 10, lines 19-55). The examiner has interpreted that a Moribe discloses that a reproduction apparatus can judge whether or not key recording area information is recorded on a medium (e.g. whether a given specific set of data (e.g. key information, etc)). Further based on the judging of the key recording area information the reproduction apparatus will be reproduced (e.g. written if judged)). The examiner therefore notes that one of ordinary skill in the art at the time the invention was made would have had the knowledge based on the motivation provided and the broadest interpretation of the references to combine Ansell to Moribe to disclosed the claimed invention. Further the examiner notes the the given elements of both Ansell and Moribe could have been combined in order to achieve a predictable result. Therefore the examiner does not find this argument persuasive.